

1981

# PUBLIC EMPLOYMENT RELATIONS BOARD

# THE PUBLIC EMPLOYMENT RELATIONS BOARD

HARRY GLUCK

CHAIRPERSON

BARBARA D. MOORE

JOHN JAEGER

MEMBER

MEMBER

IRENE TOVAR

UNAPPOINTED

MEMBER

MEMBER

CHARLES L. COLE

EXECUTIVE DIRECTOR

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# INTRODUCTION

The Public Employment Relations Board administers three laws, each covering a separate group of employees: the Educational Employment Relations Act (EERA), the State Employer-Employee Relations Act (SEERA), and the Higher Education Employer-Employee Relations Act (HEERA). The three collective negotiations laws administered by PERB now apply to approximately 730,000 employees. The laws cover public school employers, the State of California, the Regents of the University of California, the Trustees of the State University system and the Directors of Hastings College of the Law and employees thereof.

The Educational Employment Relations Act (EERA) has been in effect since April of 1976, the State Employer-Employee Relations Act (SEERA) has been in effect since July of 1978, and the Higher Education Employer-Employee Relations Act (HEERA) has been in effect since July of 1979.

# BOARD OPERATIONS

The Board is a quasi-judicial body responsible for promulgation of regulations and resolution of appeals arising from representation matters, unfair practice matters and other violations of EERA, SEERA and HEERA. It also rules on administrative appeals, requests for injunctive relief, appeals from public notice complaint decisions and requests for judicial review.

The Board is composed of five members appointed by the Governor subject to confirmation by the Senate. During this reporting period, Harry Gluck served as Chairperson. Members of the Board were: Barbara Moore, John Jaeger and Irene Tovar. One position remained vacant.

During the reporting period, the Board completed an extensive review of its regulations pursuant to the requirements of Assembly Bill 1111 (1979). The review was based upon the criteria of necessity, authority, clarity, consistency and reference. PERB conducted public meetings throughout the state to receive input from interested parties with regard to the review of regulations. In January of 1982 the Board held formal hearings to draft proposed language which would amend, repeal or adopt the regulations where necessary to bring them into compliance with AB 1111.

During 1981, the Board itself issued 15 decisions regarding representation issues. Two of these dealt with the major unit determination issue for the California State University System under HEERA. This decision involved the placement of 31,000 employees and 277 job classifications into seven bargaining units. It issued 21 decisions regarding unfair practice cases and 7 public notice decisions. A digest of Board decisions begins on page 8.

The Board also issued 22 decisions covering administrative appeals, 3 decisions on requests for judicial review, and 13 decisions on requests for injunctive relief. In the calendar year 1981, the Board itself issued a total of 81 decisions.

# LEGISLATIVE ENACTMENTS

In 1981 the Legislature made the following revisions, deletions, and additions which affect the three Employer-Employee Relations Acts administered by PERB:

#### **EERA**

AB 777	Chapter	100	Effective.	dator	January 1,	1002
	Chap cer	100	BILECCIAE	uate.	Danuary I,	T207
(Greene)						
( )						

Section 1.4 of AB 777 (Does not amend a section within EERA)

Provides that the public school employer shall meet and negotiate with employee organizations, within one month of the effective date of this bill, and may reach agreement on whether or not to postpone employee dismissal hearings until one week after the Budget Act for the 1982-83 fiscal year is chaptered.

If agreement is reached to postpone employee dismissal hearings, the notice required by Education Code section 44955 shall be given no later than two weeks after the Budget Act for the 1982-83 fiscal year is chaptered.

(This section shall apply only during the year 1982, and shall have no effect in subsequent years.)

NOTE: AB 61, Chapter 1093, effective January 1, 1982, amends the provisions of this section. (See page 6.)

Section 1.5 of AB 777 (Does not amend EERA)

Provides that the State Board of Control shall not make any reimbursement for costs incurred by school districts, pursuant to Chapter 961 of the statutes of 1975 (EERA) for:

- court appeals of PERB decisions where PERB is the prevailing party;
- 2) court appeals of unfair labor practices where the school district is the appellant and where PERB is the prevailing party; or
- 3) the filing of amicus briefs.

The State Board of Control shall prohibit reimbursement of the above costs and limit reimbursement for expenses of consultants and experts to those amounts which would be permitted for state employees.

Section 34 of AB 777 (Amends section 3543.2 of the Govt. Code)

This section amends the enumerated scope of representation under the Educational Employment Relations Act. A new subsection (b) provides that the parties may negotiate "regarding causes and procedures for disciplinary action, other than dismissal, affecting certificated employees." A new subsection (c) provides that the parties may meet to negotiate "procedures and criteria for the layoff of certificated employees for lack of funds."

NOTE: AB 61, Chapter 1093, effective January 1, 1982, also amends section 3543.2 (See bottom of this page.)

AB 61 Chapter 1093 Effective date: January 1, 1982 (Greene)

Section 18.2 of AB 61 makes technical and clarifying amendments to subsection (b) and (c) of section 3543.2 of the Government Code.

<sup>(</sup>b) . . . representative shall, upon request of either party, meet and . . . provisions of section 44944 of the Education Code shall prepart apply.

request of either party, meet . . . provision of section 44955 of the Education Code shall prevail apply.

# Section 18.9 of AB 61 amends section 1.4 of AB 777 as follows:

... and may reach agreement on whether or not to postpone employee dismissal hearings until øng/wggk/aftgt/thg Budget/Agt/føt/thg/1982/83/
fiscal/yeat/is/chapteted a time not later than four weeks after the Budget Act for the 1982-83 fiscal year is chaptered.

If agreement is reached to postpone employee dismissal hearings pursuant to this section, the notice required by Section 44955 of the Education Code shall be given no later than \*tho six weeks after the Budget Act for the 1982-83 fiscal year is chaptered, and all other time requirements prescribed by that section shall be extended accordingly.

# SEERA AND HEERA

SB 668	Chapter 230	Effective	date:	January 1, 1981
(Dills)				- '
(Amends	Government Code	section 3517.6	and 3572	.5)

Amendments were made to 3517.6 (SEERA) and 3572.5 (HEERA) of the Government Code. This bill provides that a memorandum of understanding takes precedence over a number of additional Education Code and Government Code sections when the memorandum and one of these code sections conflict.

# CASE DIGEST

# PUBLIC NOTICE CASES

As of December 31, 1981, the Board itself issued decisions in 7 public notice cases. The following is a digest of those decisions:

1. Howard O. Watts v. Los Angeles Community College District and American Federation of Teachers LA-PN-25 (4/29/81)
PERB Decision No. 150a

The Los Angeles Community College District requested that the Board vacate Decision No. 150 arguing that the Board's decision in Watts v. Los Angeles Community College District PERB Decision No. 153 (12/31/80) had rendered the issues moot. The Board, while agreeing that several of the charges had been resolved, determined that the charging party's allegation concerning the five minute speaker rule was not resolved. Charging party was entitled to amend its charge to state a prima facie case.

2. Howard O. Watts v. Los Angeles CCD and American
Federation of Teachers College Guild LA-PN-25 (11/30/81)
PERB Decision No. 150b

Complainant appealed dismissal of complaint without leave to amend. Board affirmed dismissal upon finding of no reversible error.

3. <u>Jules Kimmett v. Los Angeles CCD and California School</u>
Employees Association LA-PN-8 (3/3/81) PERB Decision
No. 158

Respondent CSEA appealed hearing officer's determination that the Association violated subsections 3547(a) and (b) by not presenting wage reopeners and other amendments to the public prior to negotiations.

The Board affirmed the hearing officer's determination that proposals regarding wage reopeners and other amendments to an agreement must be presented at a public meeting.

the Board reversed the hearing officer's conclusion that CSEA violated subsection 3547(a) because the presentation of the agenda for public meetings and the presentation of initial proposals are the responsibility of the district.

The Board further held that both the District and the Association violated subsection 3547(b) by negotiating before the public notice requirements had been fulfilled.

Howard O. Watts v. Los Angeles USD and California School Employees Association LA-PN-33 (11/19/81) PERB Decision No. 181

Complainant appealed dismissal of complaint without further leave to amend. Board affirmed dismissal upon finding of no reversible error.

5. <u>Dr. Louis Fein v. Palo Alto USD and Palo Alto Educators</u>
Association SF-PN-5 (12/2/81) PERB Decision No. 184

Complainant appealed dismissal of complaint without leave to amend. Board affirmed dismissal upon finding the intial proposals satisfied the intent of the public notice requirements that the public be informed of the issues that are being negotiated.

6. Howard O. Watts v. Los Angeles CCD LA-PN-35 (12/15/81)
PERB Decision No. 186

Complaniant appealed dismissal of complaint without further leave to amend. Board summarily affirmed dismissal for failure to state a prima facie case, and found that, absent a showing of prejudice, failure to include proof of service is not sufficient grounds for reversal.

The Board further held that section 37030 only requires technical assistance rather than legal representation in filing a complaint.

7. Howard O. Watts v. Los Angeles USD and Service Employees
International Union LA-PN-36 (12/15/81) PERB Decision
No. 187

Complainant appealed dismissal of complaint without leave to amend. Board affirmed dismissal.

#### REPRESENTATION CASES

As of December 31, 1981, the Board itself issued decisions in 15 cases involving representation issues. The following is a digest of those issues:

#### I. UNIT DETERMINATION

- A. Appropriate Unit Placement
  - 1. HEERA Unit Determinations

In the Matter of Unit Determination for Employees of CUSC LA-RR-1001, 1001-1, 1001-2, 1001-3, 1002; PC-1002; IP-2 (9/22/81) PERB Decision No. 173-H

The Board determined four units appropriate for representation purposes. They are:

Unit 1 - Physicians

Unit 2 - Health Care Support

Unit 3 - Faculty

Unit 4 - Academic Support

The Board discussed the specific composition of the units as well as the issue of exclusion of particular classifications within the respective units based on supervisory, managerial, confidential or casual status. Academic chairpersons were included in the unit.

In the Matter of Unit Determination for Employees of CUSC LA-PC-1001, 1002, 1003; RR-1004, 1005 (11/17/81) PERB Decision No. 176-H

The Board determined two units appropriate for representation purposes. They are:

Unit 5 - Operations - Support Services Unit 6 - Skilled Crafts

The Board discussed the specific composition of the units as well as exclusionary issues with respect to the supervisory and/or managerial status of several classification within the respective units. EERA - Certificated--Part-time Teachers

Mendocino Community College District and Mendocino Part-time Faculty Association SF-R-615X (2/23/81) PERB Decision No. 144a

In PERB Decision No. 144, the Board directed that evidence be taken on the status of "regular" and "contract" part-time teachers. The parties signed a stipulation purporting to exclude those classifications from the unit of part-time faculty. The Board, in light of the fact there are no incumbents in the positions presently, amended PERB Decision No. 144 to reflect approval of the unit of certificated employees including classifications currently filled. Whether "regular" and "contract" instructors are to be included was deferred until such time as there are incumbents in these positions.

3. EERA - Certificated--Psychologists

Pleasanton Joint School District, Amador Valley
Joint Union High School District and
Amador-Pleasanton School Psychologists
Association and Amador Valley Teachers
Association SF-R-92X (6/25/81) PERB Decision
No. 169

The Board determined that a separate unit of school psychologists would be appropriate where they were initially determined by the employer to be management and thus were not included in the original petitions for representation. This fact, combined with the community of interest the psychologists have among themselves, and the lack of adverse impact the separate unit would have on the efficiency of the employer's operations, was sufficient justification for departing from past decisions which placed psychologists with other certificated personnel.

4. EERA - Certificated--Speech and Hearing Specialist

Holtville Unified School District v. Holtville Teachers Association LA-R-604; UM-108 (11/18/81) PERB Decision No. 180

The Board adopted the hearing officer's findings that the position of language, speech and hearing

specialist is not a management position and is therefore included in the certificated unit.

5. EERA-Certificated--Temporary and Substitute Teachers

Dixie Elementary School District and Dixie Teachers Association SF-UM-87 (8/11/81) PERB Decision No. 171

The Board, in applying the rebuttable presumption that all classroom teachers should be placed in a single unit (Peralta CCD (11/17/78) PERB Decision No. 77), determined that number-of-days-employed had little or no significance in determining the appropriateness of the unit. Additionally, the Board recognized that because temporary and substitute teachers are classroom teachers covered by the Act they must be placed in the full-time unit unless the presumption has been rebutted. It was not rebutted in this case.

6. EERA - Classified--Affirmative Action Purchasing Manager

Oakland Unified School District and Oakland School Employees Association SF-UM-101, 109 (11/25/81) PERB Decision No. 182

The Board reversed the hearing officer's finding and determined the evidence was insufficient to establish that the affirmative action purchasing manager had the requisite discretionary authority a management employee must possess in order to be excluded from the unit.

7 EERA - Classified--Hourly Drivers

San Diego Unified School District and California School Employees Association LA-R-167X (6/25/81) PERB Decision No. 170

In 1977, the Board established a classified operations-support unit which included transportation employees. In January 1980, CSEA filed a request for recognition with the District seeking to represent temporary, hourly, pupil transportation department bus drivers.

The Board, finding hourly bus drivers perform the same work as the monthly drivers, and have

precisely the same community of interest, determined that a separate unit consisting of only the temporaries would unduly impair the employer's efficiency of operations.

8. EERA - Operations - Support Services Unit

Livermore Valley Joint Unified School District and California School Employees Association and United Public Employees SF-R-28X (6/22/81) PERB Decision No. 165

In April 1976, a formal unit hearing was held in which the hearing officer found a wall-to-wall unit appropriate. CSEA was certified as the exclusive representative.

In March 1980, SEIU filed a petition to sever an operations-support services unit out of the existing wall-to-wall configuration. The Board determined, on a basis of community of interest, efficiency of operations, extent of organization, and negotiating history, that such a unit would be appropriate. See Sweetwater UHSD (11/23/76) EERB Decision No. 4.

Antelope Valley Community College District and California School Employees Association LA-R-424 (6/25/81) PERB Decision No. 168

The Board found the requested unit a presumptively appropriate unit under <u>Sweetwater</u> (11/23/76) EERB Decision No. 4, and, also a preferred unit. The Board determined that the District failed to present evidence sufficient to rebut the presumption.

- B. Decertification Proceedings
  - 1. EERA Decertification Election

Jefferson Elementary School District and Jefferson Federation of Teachers and Jefferson Classroom Teachers Association SF-D-41, 12 (6/10/81) PERB Decision No. 164

The Board, applying the rule from <u>San Ramon</u>
<u>Valley USD</u> (11/20/79) PERB Decision No. 111, that
election results will not be disturbed absent a

determination that the conduct had a probable impact on the employee's vote, concluded that the election results should not be overturned.

The irregularities, which the Board termed vague and insufficient, included allegations of ambiguous information disseminated by a PERB agent and last minute electioneering by the Federation.

2. EERA - Decertification Petition

Inglewood Unified School District and Inglewood Federation of Teachers and Inglewood Teachers

Association LA-R-98; D-70 (5/12/81) PERB Decision No. 162

The Board affirmed the hearing officer's determination that there was no contract bar and, therefore, the decertification petition filed by Inglewood Federation of Teachers was timely filed.

C. Requests for Reconsideration

SEERA - Unit Determination for the State of California S-R-1-56-S (3/20/81) PERB Decision No. 110d-S

After determining extraordinary circumstances existed, including complexity and volume of the evidence presented, the number of parties and briefs, and the difficulty of identifying the employees to be excluded as managerial, supervisory and confidential, the Board allowed reconsideration of PERB Decision No. 110c-S.

The Board, after reconsideration, ordered that:

- Technical corrections be made;
- Perfected stipulations be incorporated into PERB Decision No. 110c-S;
- Certain hearing officer recommendations be incorporated into PERB Decision No. 110c-S;
- Voter eligibility of multiple position employees be accomplished in accordance with the Board's direction;

- 5. The Regional Director examine new classifications and place them appropriately;
- 6. The Regional Director's directed election order reflect the Board's acceptance of the stipulated exemptions to the release of employee home addresses;
- 7. Certain classifications be excluded from representation units.

#### D. Unit Modification Procedures

 EERA - Unit Modification--Custodial and Food Service Employees

Atascadero Unified School District and California School Employees Association LA-UM-146; R-369 (12/30/81) PERB Decision No. 191

The Board affirmed the hearing officer's determination that the District had met its burden of proof that the positions were no longer appropriately included in the established unit by virtue of changes in circumstances. Additionally, the Board found no waiver by the District due to time limitations.

# E. Vacated Decisions

EERA - Los Angeles Community College District and Classified Union of Supervisory Employees LA-R-809 (12/16/81) PERB Decision No. 123a

Pursuant to the order of the Second District Court of Appeals, the Board vacated its decision in Los Angeles CCD (3/25/80) PERB Decision No. 123 and issued a new decision in accord with the court's ruling.

#### UNFAIR PRACTICE CASES

As of December 31, 1981, the Board itself issued decisions in 21 unfair practice cases. The following is a digest of those decisions:

#### SEERA

A. Access to State Employees

State Trial Attorneys Association v. State of California Department of Transportation and Governor's Office of Employee Relations S-CE-2-S (7/17/81) PERB Decision No. 159b-S

The Board held that the employer had discriminated against the organization by an unlawful limitation on the organization's right to use the state mail system. An otherwise valid no-solicitation rule will violate employees' organizational rights if the rule is discriminatory either in scope or application. Since the employer's policy required different treatment of employee organization mail than of other forms of personal mail, it was discriminatory on its face. finding a violation of subsection 3519(a) of the Act, the Board weighed the right of access implicit in the purpose and intent of SEERA with the employer's right to establish guidelines. Since the conduct was not justified by either operational necessity or circumstances beyond the employer's control, the balance was tipped in favor of employee's rights.

# B. Elections

1. State Trial Attorneys Association v. State of California, California Department of Transportation S-CE-2-S (3/17/81) PERB Decision No. 159-S

The Board denied a petition, filed by State Trial Attorneys Association, to stay the election.

2. State Trial Attorneys Association v. State of California, California Department of Transportation S-CE-2-S (5/15/81) PERB Decision No. 159a-S

The Board, upon finding no extraordinary circumstances existed, denied the State Trial

Attorneys Association's request for reconsideration of PERB Decision No. 159-S.

Association v. State of California, Department of Forestry S-CE-4-S; California Department of Forestry Employees Association v. State of California Governors Office of Employee Relations S-CE-19-S; California Correctional Officers Association v. State of California Governor's Office of Employee Relations S-CE-18-S (9/21/82) PERB Decision No. 174-S

The Board, in balancing the right of rank-and-file employees to exchange information with supervisors who are members of their organization against the employer's interest in protecting itself against unfair practice charges, found that enforcement of the State's Manual and Guide during the critical pre-election period did not constitute a violation of SEERA. See State of California, Department of Forestry (3/25/80) PERB Decision No. 119-S.

#### HEERA

A. Access to Employees

William H. Wilson v. University of California at Berkeley SF-CE-4-H (11/25/81) PERB Decision No. 183-H

The Board affirmed the hearing officer's determination that the University had violated subsections 3571(a) and (b) of the act by denying access to the internal mail system. The University may not insist that organizational mail be sent through the United States Postal Service since that denies any access to the internal mail system. It may, however, devise an alternative method of mail distribution which will not require supervisory employees to deliver the organizational materials.

B. Release Time

California State Employees Association, University Division v. Requests of the University of California SF-CE-70-H (12/22/81) PERB Decision No. 189-H

Section 3569 of the Act provides paid release time for a reasonable number of representatives of an exclusive representative. The Board held that since CSEA was not the exclusive representative, the University was not compelled to grant paid release time for employees to participate in informal conferences.

#### EERA

- A. Duty to Meet and Negotiate
  - 1. California School Employees Association v. Walnut Valley Unified School District LA-CE-460 (3/30/81)
    PERB Decision No. 160

The District and CSEA negotiated an agreement covering the classified employees, including instructional aides. The District, without notifying CSEA, approached various aides requesting that they work additional hours. CSEA, the exclusive representative, alleged failure to negotiate on a matter within the scope of representation.

The Board dismissed the charge for failure to prove that the District bypassed CSEA in an attempt to change an existing overtime policy. To find a violation of the duty to meet with CSEA, there had to be a showing of conflict with established policy, past practice or contractual requirements.

2. <u>United Professors of Marin v. Marin Community College</u>
<u>District SF-CE-124 (4/3/81) PERB Decision No. 161</u>

The Board found that since the charging party is now the employees' exclusive representative, the employer has a duty to meet and negotiate. However, since at the time the charge was filed and dismissed the charging party was not yet an exclusive representative, the Board determined that no useful purpose would be served by reviewing whether the employer should have met and negotiated with the charging party prior to certification.

- B. Bargaining; Refusal/Bad Faith
  - 1. Oakland School Employees Association v. Oakland Unified School District SF-CE-321 (11/2/81) PERB Decision No. 178

After the Association tendered a proposal concerning layoff procedures, the District rejected the proposal and refused to offer a counter-proposal. The District based its position on Education Code provisions, uncertainty of funding and desired flexibility.

As determined in <u>Healdsburg Union High School</u>
<u>District</u> (6/19/80) PERB Decision No. 132, parties are permitted to seek agreement as to a proposal concerning layoff notices to the extent that such a proposal does not conflict with mandates of the Education Code, since

[A] dvanced notice of the employer's plans to implement a layoff will permit the effective exchange of ideas and possible alternatives to the layoff.

The District is therefore obligated to negotiate the general subject of the notice and timing of layoffs.

Since the Education Code requires only that a minimum of 30 days' notice be given, the Association's proposal for a longer period is not in conflict with the Code. The exception to the notice referred to in section 45117(c) of the Education Code permits the employer to avoid notice under certain circumstances. The District could not rely on this provision to find the Association's proposal totally out of scope; rather, it could legitimately object to the absence of an emergency provision in the proposal.

A flat refusal to reconcile differences by failing to offer counterproposals could be construed to be in bad faith if no explanation or rationale supports the employer's position. In this case, the employer steadfastly refused to make any concessions on the notice-of-layoff proposal, but explained that it was unwilling to hamper its flexibility in light of the fiscal uncertainties caused by Proposition 13 and unwilling to interject the decisions of a third party into the layoff process. The Board concluded that this "hard bargaining" posture did not evidence bad faith, especially in light of the fact that the parties had reached agreement on most of the contract proposals at the time this controversy arose.

2. Victor Valley Teachers Association v. Victor Valley
Joint Union High School LA-CE-1083 (12/31/81) PERB
Decision No. 192

The Board does not have authority to enforce agreements between the parties unless the alleged violation of such an agreement also constitutes an unfair practice (Government Code section 3541.5(b)).

In this case, the Board reversed a hearing officer who had dismissed a charge, without leave to amend, dealing with a disagreement over a negotiated wage provision. Upon a finding that the charging party may have been able to amend its charge to state a prima facie violation of the statute, the Board remanded the case. The Chief Administrative Law Judge was instructed that if an amended charge was submitted which stated a prima facie case, it was to be processed in accordance with PERB procedures.

C. Interference with Protected Activity

John Swett Educational Association v. John Swett Unified School District SF-CE-53 (12/21/81) PERB Decision No. 188

The Board found that the District had violated subsection 3543.5(a) of EERA by interfering with the right to engage in protected organizational activity. The interference arose through improper speech-related conduct which carried a coercive meaning when viewed in its overall context.

The Board further found deferral to the contractual arbitration procedure not required as the issue would go beyond the agreement's scope and leave the Association without remedy.

D. Organizational Security

John A. Broadwood, E.C. (Beverly) Chamberlain, and Barbara J. Nutt v. Los Altos Teachers Association and Los Altos School District SF-CO-30, 31, 32; CE-139, 140, 141 (12/29/81) PERB Decision No. 190.

After a voluntary recognition by the District, the Association negotiated a contract which was made retroactive. The retroactive contract included a requirement that nonmembers pay an annual service fee. Faced with the alternative of termination, the charging parties paid the service fee under protest. They had originally tendered a pro rata portion of the fee calculated from the execution of the contract to the end of the fiscal year.

Based on the policy considerations which undoubtedly led to the inclusion of organizational security in EERA, the Board concluded that the retroactive clause negotiated in Los Altos did not violate the Act. During the pre-contract period, the organization incurs expenses while negotiating with the employer, a process that produces the wages, hours, and terms and conditions of employement which benefit members and nonmembers alike. Section 3544.9 obligates the exclusive representative to fairly represent each and every employee in the appropriate unit. Policy considerations dictate imposing mutual obligations on the parties involved. Since unions must fairly represent all unit members during the pre-contract period, it is only fair to require all unit employees to contribute to the costs necessarily incurred by the union in fulfilling its duty. To exempt nonmembers from a retroactive application of the service fee would defeat the very purpose of the fee.

In balancing the issues, the Board also relied on the fact that the collective negotiating scheme of EERA, as a whole, supports retroactivity in several other respects. Organizational security is specifically within the scope of mandatory negotiations. Nothing in the Act indicates that the negotiability of organizational security agreements is subject to treatment different from other negotiable items such as wages, hours or appropriate terms and conditions of employment. All of the latter may be, and frequently are, given retroactive effect by the negotiated agreements.

The appellants have filed suit in the Court of Appeal to overturn the Board's decision.

#### E. Procedures

1. Jules Kimmett v. Service Employees International Union LA-CO-36 (5/18/81) PERB Decision No. 163.

The Board affirmed the hearing officer's notice of dismissal with prejudice and without leave to amend.

2. Service Employees International Union v. Solano
Community College District SF-CE-475 (6/30/81) PERB
Decision No. 166.

The Board affirmed the hearing officer's dismissal of the unfair practice charge with prejudice. As CSEA may agree to an election in a unit carved out by a valid request for recognition without losing all contract bar protection for the residual unit, SEIU's request for recognition created no question concerning representation. As such it was not improper for CSEA and the District to continue to meet and negotiate in the face of the untimely request for recognition filed by SEIU.

3. Jules Kimmett v. Los Angeles Community College
District and American Federation of Teachers
LA-CE-1059, 1073, 1138, 1141, 1168; CO-112 (6/24/81)
PERB Decision No 167

The Board affirmed the hearing officer's determination that public notice complaints cannot be filed as unfair practice charges. As such, the charges were dismissed without leave to amend.

4. Gail Weld v. Hayward Unified School District SF-CE-189 (8/24/81) PERB Decision No. 172

Appellant, a school psychologist, was designated a managerial employee by the District with the acquiescence of the exclusive representative.

Appellant charged that the District, by offering an insurance plan to managerial employees who were members of state-wide Association of California School Administrators (ACSA), violated section 3543.5(d) of EERA. Appellant, a member of the local ACSA chapter only, charged that limiting availability of the insurance plan to members of the state-wide organization impermissibly encouraged membership therein.

If appellant were managerial, as contended by the parties, she lacked standing to file an unfair as a matter of law. If she was not, in fact, managerial, she would not have been eligible for ACSA membership and hence was ineligible to receive the insurance benefit in question. Thus, she would not be within the class of persons potentially aggrieved by the alleged encouragement to join ACSA. On either ground, she lacked standing to bring the charge. The Board, therefore, dismissed the charge.

5. Nevada City Faculty Association v. Nevada City School District S-CE-91 (12/4/81) PERB Decision No. 185

Since the only portion of the hearing officer's decision to which exceptions were filed dealt with charges which were withdrawn with prejudice following a settlement of the issues, the Board dismissed the charges in their entirety. In so doing, the Board made no finding with respect to the lawfulness or unlawfulness of any of the District's released-time policies.

# F. Release Time

1. Anaheim Secondary Teachers Association v. Anaheim Union High School District LA-CE-116 (10/28/81) PERB Decision No. 177

The District unilaterally adopted a policy which included a provision for passing on the costs of release time to the exclusive representative. The District, throughout, refused to meet and negotiate over implementation of the policies.

The Board rejected the District's argument that released time is not related to hours, and therefore outside scope. The Board found that the amount of released time is related to hours and inherently affects compensation. The Board, in determining that release time is essential to the negotiating process, found the employer is not entitled to establish the initial released time policy nor pass on the costs to the exclusive representative.

2. Sierra College Faculty Association v. Sierra Joint Community College District S-CE-89 (11/5/81) PERB Decision No. 179

The Board found the District's refusal to negotiate on any release time proposals a violation of subsection 3543.5(c) of EERA. The Board's construction of the statutory phrase "... when meeting and negotiating" does not limit release time to the periods when negotiating sessions and teaching duties actually coincide. The complete refusal to discuss this one subject was not negated by successful negotiations on other matters. Additionally, the Board found that since the reasonableness of release time is a question of fact and depends upon the surrounding circumstances, evidence of practices in other districts may be relevant and probative.

# G. Scope

1. Sutter Education Association v. Sutter Union High School District S-CE-182 (10/7/81) PERB Decision No. 175

The Board found that the District had violated subsection 3543.5(c) of EERA by unilaterally increasing the number of periods taught per day and

reducing preparation time. The District's assertion of waiver by Sutter Education Association was unsupported since the record indicated that the Association was given no reasonable opportunity to negotiate. The District's arguments that length of the workday is outside the scope of representation or that the unilateral change was required by business necessity were rejected.

2. <u>CSEA</u> v. <u>North Sacramento School District</u> S-CE-203 (12/31/81) PERB Decision No. 193

The Board found that the District had violated subsections 3543.5(a), (b) and (c) of EERA by taking unilateral action on a matter about which the District was obligated to negotiate. Although the District claimed it was instituting a layoff procedure which was outside the scope of negotiation, the Board concurred with the hearing officer's characterization of the action as a reduction in hours.

# PERB FUNCTIONS

The Board has these functions established by statute:

- to determine in disputed cases, or otherwise approve, appropriate units;
- to determine, through secret ballot elections, whether employees wish to be represented by an employee organization for the purpose of negotiating and, if so, which organization;
- to prevent and remedy unlawful acts, including those defined in the statutes as unfair practices, by either employers or employee organizations;
- to effectuate statutory impasse procedures designed to assist employers and employee organizations in reaching agreement;
- to ensure that the public is afforded sufficient information and time to register its opinion regarding subjects for negotiations;
- to promulgate regulations to carry out the provisions and effectuate the purposes and policies of the collective negotiation statutes.

- to monitor the financial activities of employee organizations;
- to conduct research and public education and training programs relating to public employer-employee relations.

# PERB PROCEDURES

#### REPRESENTATION PROCEDURES

The first area of the Board's involvement with the parties is usually in a representation matter. In accordance with the provisions of the statutes, the Board is empowered to determine appropriate units for negotiating purposes.

This process is set in motion when a petition is filed by an employee organization. If there is only one employee organization and the parties agree on the unit description, the employer may either grant voluntary recognition or ask for a representation election. If more than one employee organization is competing for the same unit, an election is mandatory. The Board has stressed voluntary settlements through cooperation and has consistently offered the assistance of Board agents to work with the parties for unit settlements. It is the policy of the Board to encourage the parties covered by the Act to resolve disputes by mutual agreement provided such agreement is not inconsistent with the purpose and policies of the Act.

In a case where there is a dispute regarding the appropriateness of a unit, a Board hearing officer holds a unit determination hearing. The dispute is decided on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization and the effect of the size of the unit on the efficient operation of the employer.

After the unit dispute is resolved, the employer may grant voluntary recognition if there is only one employee organization and the organization has evidenced majority support. If the employer declines to grant voluntary recognition, an election is held.

The Board is also involved, under both EERA and HEERA when one or both parties wish to make changes in the description of an established unit. These changes are effected in accordance with PERB Regulation 33261 (EERA) or Regulation 51605 (HEERA). In 1982, provision will be made for unit modifications under SEERA as well. When the differences between the parties cannot be settled informally with the aid of the Board agent, a formal hearing is held and a decision rendered following the same principles as representation hearings.

Another employee organization or group of employees may try to decertify an incumbent exclusive representative by filing a decertification petition with the PERB. Such a petition would be dismissed if it is filed within 12 months of the date of voluntary recognition by the employer or certification by the PERB of the incumbent exclusive representative. The petition would also be dismissed if it is filed when there is a negotiated agreement currently in effect, unless it is filed during a window period beginning approximately 120 days prior to the expiration of that agreement.

#### ELECTIONS

One of the major functions of the PERB has been to conduct elections. The two general categories of elections are representation and organizational security elections. Representation elections involve the selection of an exclusive representative, if any, by employees in a negotiating unit which has been determined to be appropriate. The great majority of elections fall into this category.

A representation election occurs in several ways. A consent election is held if the parties to the election can agree on the description of an appropriate negotiating unit and

on other provisions such as dates, hours and location of polling sites.

A directed election is ordered by a Regional Director when the parties are not able to agree upon a negotiating unit and bring their dispute to the PERB for a hearing and decision. A directed election might also be ordered by a Regional Director when the parties agree upon an appropriate unit, but cannot agree on the provisions of the actual conduct of the election.

In consent and directed elections, the choice of "No Representation" appears on each ballot in addition to the name of the employee organization(s).

During an election, a Board agent or an official observer of the parties may challenge the eligibility of any person to cast a ballot. If challenged ballots are not resolved at the ballot count, they are set aside unless they are sufficient in number to affect the results of the election. In the latter case, a PERB hearing is held to determine which, if any, of the challenged ballots are eligible to be counted.

If no entry on the ballot receives a majority of all valid votes cast, a runoff election is directed by the Regional Director. In this case, the ballot lists the two ballot

entries which received the greatest number of votes in the first election.

During the 10 days following an election, objections to the conduct of the election may be filed. If objections are filed, a PERB hearing and decision normally follow. The result of the election will not be certified until all objections have been decided. If an employee organization receives a majority vote, and no objections to the election are filed, the organization will be certified by the PERB as the exclusive representative for the unit in question.

A decertification election is conducted by PERB when the employees of a negotiating unit seek to remove the incumbent exclusive representative. The process is initiated by filing a valid decertification petition with the PERB. Procedures for conducting decertification elections are the same as those utilized for other representation elections.

The second general category of elections (under EERA and HEERA) is the organizational security election. Such an election may be held to approve or rescind an organizational security agreement. Once an organizational security arrangement has been agreed upon by the employer and the exclusive representative, the employer may place the provision

in the contract or request the PERB to hold an election to determine if the employees wish to adopt the provision. The ballot calls for the employees in the unit to vote "Yes" or "No" on the provision. It is approved if a majority of the employees who voted cast "Yes" ballots.

A petition to rescind an existing organizational security provision may be filed by 30% of the employees in the unit. If a majority of the employees in the unit vote to rescind, it is removed from the contract.

Election procedures similar to those for a representation election are utilized. Objections to the conduct of the election may be filed.

#### IMPASSE PROCEDURES

The agency assists the parties in reaching negotiated agreements through mediation, then through factfinding under EERA and HEERA, should it be necessary. If the parties are unable to reach an agreement during negotiations, either party may declare an impasse. At that time a Board agent contacts both parties to determine if they have reached a point in their negotiations where their differences are so substantial or prolonged that further meetings would be futile. In cases where there is no agreement of the parties regarding the

existence of an impasse, a Board agent seeks information that would help the Board to determine if mediation would be helpful and productive at that time.

The Act provides that the mediator cannot be a PERB staff member. Therefore, the PERB has maintained an interagency agreement with the Department of Industrial Relations, State Mediation and Conciliation Service, to provide mediators in PERB-determined impasses. The costs of mediation services under this agreement are paid by the State. The parties may jointly agree upon their own mediation procedure; however, the cost of any such procedure shall be borne equally by the parties. The parties have utilized their own mediation procedure in only a few cases.

Once it is determined that an impasse exists, the State Mediation and Conciliation Service is contacted to assign a mediator. The mediation process under the EERA has been enormously successful.

If settlement is not reached during mediation, either party (under EERA and HEERA) may request that factfinding procedures be implemented. If the mediator agrees that factfinding is appropriate, PERB provides a list of neutral factfinders from which the parties select an individual to chair the tripartite panel. The cost of the neutral chairperson is borne by the

PERB. The cost of the other two panel members, each of whom is selected by their principal, is paid by the respective parties.

If the dispute is not settled during factfinding, the panel is required to make findings of fact and recommend terms of settlement. These recommendations are advisory only. Under EERA, the public school employer is required to make the report public within ten days after its issuance. Under HEERA, the parties are prohibited from making the report public for at least 10 days. Both laws provide that mediation can continue after the factfinding process.

#### ADMINISTRATIVE APPEALS

Administrative decisions rendered by Board staff are, with the limitations provided in PERB Regulation 32380, subject to appeal by the parties to the Board itself. Administrative decisions are any policy or procedural decisions made by staff other than those resulting from a formal hearing or a refusal to issue a complaint in an unfair practice matter.

#### UNFAIR PRACTICE PROCEDURES

An employer, an employee organization, or an employee may file a charge alleging an unfair practice. Upon receipt, the charge is docketed, assigned a case number and a copy is served

on the party alleged to have committed the unlawful act. The charge is screened to see that it states a prima facie case.

If it is determined that the charge fails to state a prima facie case, the charging party is informed of the determination. If the charge is neither amended nor withdrawn, the Board agent assigned will dismiss the charge. The charging party then has a right to appeal the dismissal to the Board.

If it is determined that a charge states a prima facie case, a complaint is issued. The respondent then files an answer to the complaint. A Board agent then calls the parties together for an informal conference. At this time efforts are made to settle the matter by mutual agreement. At the informal conference, the parties are free to discuss the case in confidence with the Board agent. No record is made since the primary purpose is to achieve a voluntary settlement. If it becomes apparent that voluntary settlement is unlikely, either party may request a formal hearing.

If a formal hearing is necessary, it is conducted by a different ALJ than the one present at the informal conference and is typically held in the local community. If this arrangement is not mutually desirable, the hearing will be held at one of PERB's regional offices or in other state facilities.

The Administrative Law Judge assigned to hear the case rules on motions, takes sworn testimony and receives evidence. The ALJ then studies the record, considers the applicable law, and issues a proposed decision.

ALJ's proposed decisions are made in accordance with precedential Board decisions. In the absence of a Board decision on the same or similar facts, the hearing officer will decide the issue(s) applying such other relevant legal precedent as is available subject to an appeal to the Board. ALJ's proposed decisions become final decisions of the Board if not appealed and are binding on the parties to the particular case.

After receipt of the proposed decision, any party to the proceedings may file a Statement of Exceptions with the Board and submit briefs in support thereof. This method provides any party with the opportunity to appeal the proposed decision before it would otherwise become effective. The Board, after hearing the exceptions, may affirm the decision, modify in whole or in part, reverse, or send the matter back to the ALJ for the receipt of additional testimony and evidence. At any time during the above process, the Board may elect to transfer a case from an ALJ to the Board itself.

An important distinction exists, however, between these decisions and decisions of the Board itself. Decisions of the Board itself are made after deliberation by the Board members on cases that have been appealed from an ALJ's decision. The decisions are precedential and bind not only the parties to that particular case but also serve as precedent for similar issues until modified or reversed by the Board itself or by the courts. They are appropriately cited as precedent, while those of the ALJs' are not.

#### LITIGATION

The PERB is represented in litigation by its General Counsel. The Board may be involved in at least six types of court proceedings:

- (1) judicial review of a unit determination decision;
- (2) court enforcement of Board decisions or subpoenas;
- (3) review of a final Board order in an unfair practice case;
  - (4) injunctive relief;

- (5) attempts to block the Board's processes; and
- (6) the Board may file amicus curiae briefs in or be a party to litigation affecting its jurisdiction or public sector labor relations generally.

#### PUBLIC NOTICE COMPLAINTS

The EERA provides that the public be informed about the issues to be negotiated and also be afforded the opportunity to express its views on the issues at a public meeting of the school employer before meeting and negotiating begin.

PERB regulations provide the public with a mechanism to allege a violation of this section of the EERA. A Board agent is assigned to investigate each complaint. Every effort is made to gain voluntary compliance and to resolve the complaint without the necessity for a formal hearing. To date, the staff has been highly successful with this approach.

#### UPDATE

#### EERA

#### Elections

During 1981, PERB conducted 75 elections of various kinds covering approximately 24,600 employees. A listing of the elections conducted in 1981 is found in the appendices, page 67.

There were 15 elections conducted by PERB during 1981 to determine which employee organization, if any, would represent the employees of a particular negotiating unit. Of these, 14 resulted in the selection of an exclusive representative and one in the selection of no representation.

In addition, there were 33 decertification elections. Of these, 21 resulted in the retention of the incumbent organization; 2 resulted in the selection of no representation, 7 resulted in the selection of another employee organization as the exclusive representative, and 3 remain unresolved.

Organizational security provisions negotiated between the employer and the exclusive representative required 26 elections to be run by PERB in 1981. Of these elections, 23 resulted in ratification of the organizational security provision and 2

resulted in rejection of the organizational security provision; l resulted in rejection of a proposal to rescind the organizational security provision.

### Representation Procedures

When the parties seek to establish a new unit or to modify an existing unit, a petition must be filed with the PERB regional office. A Board agent then investigates the request to ensure compliance with the Act and Board policies. In disputed cases, the Board's staff frequently were able to help the parties resolve their differences, thus precluding the necessity of a time-consuming formal hearing.

During 1981, 55 requests/interventions for recognition and 186 petitions for unit modifications were received and processed. There were 9 proposed decisions issued which dealt with representation issues.

### Mediation/Factfinding

The EERA provides for both mediation and factfinding, if necessary, to assist those parties who may have reached an impasse in their attempt to negotiate an agreement on wages, hours, and terms and conditions of employment.

The process of assisting the parties to reach negotiated agreement through mediation, or factfinding when necessary, has continued to be productive. In 1981, PERB received a total of 376 mediation requests, 52 (14 percent) proceeded to factfinding.

## Public Notice Complaints

The EERA provides that the public be informed about the issues being negotiated and also be afforded the opportunity to express its views on the issues.

Twelve public notice complaints were filed with PERB in 1981.

#### UPDATE

#### SEERA

In the early months of 1980, PERB hearing officers held a series of sub-hearings structured to provide the data needed to determine appropriate bargaining units. These hearings resulted in approximately 30,000 pages of testimony and thousands more pages of exhibits which were submitted to the Board itself for a decision. On November 7, 1979, PERB Decision No. 110-S, Unit Determination for the State of California was issued. This placed approximately 145,000 state employees in over 4,000 classifications into 20 bargaining units. On December 31, 1980, PERB Decision No. 110c-S was This decision was based on information produced during issued. additional hearings held in 1980, and identifies employees to be excluded from each of the 20 units as managers, supervisors, or confidential employees, or employees otherwise excluded from coverage under SEERA pursuant to Government Code subsection 3513(c). This decision also ordered the conduct of representation elections in all units.

On March 25, 1980, by a 2-1 decision, the 3rd District Court of Appeal declared SEERA unconstitutional, based on its interpretation of the constitutional powers of the State Personnel Board (3 Civil 18364). This decision was appealed to the State Supreme Court by the Governor of the State of California, the California State Employees' Association and the Public Employment Relations Board. The Supreme Court granted the petitions for hearing and oral arguments were held before the Court on December 2, 1980. In a decision issued on March 12, 1981, the Supreme Court found SEERA to be constitutional.

A total of 45 valid election petitions were filed by employee organizations during early 1980. PERB conducted the 20 elections during the Spring of 1981. Runoff elections were required in 3 units. As of this writing, 19 of the 20 units now have exclusive representatives in place. See next page for a complete listing.

## SEERA UNITS

	Approximate Number of Employees		Exclusive* Representative
Unit 1	24,000	Administrative, Financial, and Staff Services	CSEA
Unit 2	1,800	Attorney and Hearing Officer	NONE**
Unit 3	2,200	Education and Library	CSEA
Unit 4	32,000	Office and Allied	CSEA
Unit 5	4,200	Highway Patrol	CAHP
Unit 6	6,500	Corrections	CCOA
Unit 7	4,300	Protective Services and Public Safety	CAUSE
Unit 8	2,300	Firefighter	CDFEA
Unit 9	4,700	Professional Engineer	PECG
Unit 10	1,300	Professional Scientific	CSEA
Unit 11	3,100	Engineering and Scientific Technicians	CSEA
Unit 12	9,400	Craft and Maintenance	CSEA
Unit 13	500	Stationary Engineer	IUOE
Unit 14	800	Printing Trades	CSEA
Unit 15	6,300	Custodial and Services	CSEA
Unit 16	1,000	Physician, Dentist and Podiatr	ist UAPD
Unit 17	1,600	Registered Nurse	CSEA
Unit 18	7,600	Psychiatric Technician	CWA
Unit 19	3,100	Health and Social Services/ Professional	AFSCME
Unit 20	1,500	Nonprofessional Medical and Social Service Support	CSEA
Total	118,200		

<sup>\*</sup>See page 65 for explanation of abbreviations.
\*\*Challenged ballots determinative; objections filed.

#### UPDATE

#### HEERA

### Representation Matters Concerning CSUC

During 1979, numerous petitions were filed for the representation of various units claimed appropriate in the California State University system. In 1980, an election was held in an uncontested statewide unit of peace officers and resulted in the certification of an exclusive representative for that unit of employees. The remainder of the petitions required extensive unit determination hearings that were conducted during 1980 and the records, together with their recommended decisions, were transferred to the Board in 1981. In October and November of 1981, the Board issued its unit determination decisions finding six additional units (totalling approximately 24,000 employees) appropriate. They are:

- 1. Physicians
- 2. Health Care Support
- 3. Faculty
- 4. Academic Support
- 5. Operations-Support Services
- 6. Skilled Crafts

A seventh unit, Clerical and Administrative Support Services (approximately 7,000 employees), was also petitioned for. With assistance from PERB agents, the parties were able to agree on the composition of the unit and no hearing was required.

Elections in all seven units were conducted by mailed ballot with the results tabulated February 1, 2 and 3 of 1982. By printing time of this report, the results were as follows:

- a. Units 2, 3 and 4 will require runoff elections;
- b. Units 1, 5, 6 and 7 were completed with no objections filed and certifications of exclusive representatives will be issued in mid-February.

### Representation Matters Concerning UC

## <u>Petitions</u>

Petitions were filed during 1980 to determine appropriate units covering virtually all job classes and sites within the University of California system. There were 10 requests for recognition, 37 petitions for certification, 25 parties of interest, and 19 limited parties. In addition, one unit modification was filed. These filings ranged from employees located at a single campus or laboratory to system-wide units.

These filings covered the following groups of employees:

- 1. Firefighters
- Laborers and gardeners
- Crafts and trades employees
- 4. Protective services officers
- Police officers and sergeants
- 6. Custodians
- 7. Printing trades employees
- 8. ESL teachers
- 9. Stationary engineers
- 10. Health professionals
- 11. Service, maintenance and operations employees
- 12. Lab technician
- 13. Nurses
- 14. Truck drivers
- 15. Medical housestaff

- 16. Operating engineers
- 17. Technical employees
- 18. Professional classes
- 19. The faculty of UC Berkeley, UC Los Angeles, UC Santa Cruz and UC Riverside
- 20. Office and clerical employees
- 21. Patient care and hospital service employees
- 22. UC Los Angeles and UC Berkeley Institute of Industrial Relations employees
- 23. Skilled trades
- 24. Reprographics employees

### Elections

Elections have been held in four undisputed units. Two of the elections resulted in the selection of exclusive representatives. The university police are represented by the University Police Association in a systemwide unit. In separate elections conducted for the faculty at U.C.L.A. and U.C. Santa Cruz, no entry on the ballot received a majority support and runoff elections were conducted in early 1981. U.C.L.A. faculty voted for no representation while the U.C. Santa Cruz faculty selected the Faculty Association, U.C. Santa Cruz as it's exclusive representative. The U.C. Berkeley faculty, in an election held in 1980, voted for no representation.

## **Hearings**

Representation hearings were conducted in Berkeley and Los Angeles between March and October 1980 during which extensive testimony was taken in relation to the remaining petitioned-for units.

The parties submitted briefs by April 1981. In September 1981, the Board approved a request by the parties to defer a subsequent hearing on exclusionary hearings until after unit recommendations are issued.

ALJ decisions recommending appropriate units were issued on February 8, 1982. These recommendations have been referred to the Board for a final decision. After the Board's decision, elections, where appropriate, will be conducted.

#### UNFAIR PRACTICE

#### EERA

In 1981, 512 unfair practice charges were filed. During the calendar year, 461 charges were closed. There were 98 dismissals issued; of these 11 were appealed and 4 still had appeal time remaining at the close of 1981. In addition, 66 formal ALJ decisions were issued, of which 48 were appealed to the Board. There were 339 charges withdrawn.

#### **SEE RA**

During 1981, 178 unfair practice charges were filed.

During the calendar year, 137 charges were closed. There were 14 dismissals; of these, 3 were appealed. In addition, 4 formal ALJ decisions were issued; of these, 2 were appealed to the Board. There were 117 charges withdrawn.

#### HEERA

During 1981, 105 unfair practice charges were filed. There were 2 dismissals; of these, 1 was appealed. In addition, 5 formal ALJ decisions were issued; of these, 3 were appealed to the Board. There were 66 charges withdrawn.

In addition, Board agents were extremely active in working with the parties under EERA, SEERA and HEERA. Through informal conferences, the agents attempted to work out mutually acceptable solutions to the problems giving rise to the charges. In the vast majority of cases, this resulted in withdrawal of the charges by settlement. Graphs of the unfair practice charges filed during 1981 are found in the appendices, pages 60, 61 and 62.

#### UPDATE

#### PERB RELATED LITIGATION

SUPREME COURT

Pacific Legal Foundation v. Brown (1981) 29 Cal.3d 168

In this case, the California Supreme Court upheld the constitutionality of SEERA. Since this case resolved the threshold question concerning the constitutionality of the negotiating law for state employees, it is one of the most important decisions of the year. The new negotiating law established a structure for negotiations in which the Governor represented the state for purposes of setting salaries and provided for the resolution of unfair practices.

The primary issue in this case was whether PERB might regulate matters relating to discipline without conflicting with the State Constitution which granted the State Personnel Board responsibility for classification and discipline. The Court upheld the Act and thus stopped a challenge which might have been a death blow to SEERA.

#### COURTS OF APPEAL

Many of these decisions define the relationship between PERB and the courts as these institutions attempt to define their respective roles regarding public sector collective bargaining. Under Meyers-Milias-Brown, individual courts interpreted the law without benefit of a prior decision by an administrative agency. In the eyes of many observers, this has led, in many instances, to inconsistent and contradictory decisions. Under EERA, SEERA, and HEERA, however, PERB is charged with initial interpretation of the Acts, rather than the courts, to ensure uniformity of decisions. Pursuant to the statutes, the findings of the Board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, are conclusive.

Decisions by the courts of appeal may be categorized as:

- Those in which one party challenges the action of another and asks the court for relief without first appearing before PERB.
- Those in which PERB has made a decision and the decision is before the court for enforcement.

With regard to the first category, a well established doctrine in the private sector known as preemption applies.

This doctrine (exhaustion of administrative remedies, preemption or primary jurisdiction) provides, for PERB administered statutes, that if a subject is arguably an unfair practice, a party may not ask the court for relief until the agency entrusted with the responsibility for interpreting the law has acted or refuses to act.

## Council of School Nurses v. LAUSD (1980) 113 Cal.App.3d 666

A group of nurses were unhappy with the UTLA contract which provided that teachers were to spend six hours of work on site and two hours of work off the school grounds and the nurses were to spend eight hours of work on site. In an action against the District and UTLA, the nurses argued that the provisions of the contract were contrary to the Education Code and also constituted a breach of the duty of fair representation. The action was taken directly to court and not to PERB. The court dismissed the case because the nurses did not go to PERB first. nurses argued that the Education Code violation was properly before the court, but the court skirted the issue of the Education Code violation and combined it with the duty of fair representation.

## Fresno Unified School District v. Teachers Association (1981) 125 Cal.App. 3d 259

In spite of a no strike clause in the contract, a strike occurred. The District brought suit against the association alleging a contract violation.

Mindful of the San Diego Supreme Court decision, which did not involve a breach of contract, the parties asserted that PERB lacks authority to enforce contracts. The court of appeals held that the district still must go to PERB first. The Court noted that the District and the Association had filed reciprocal unfair practice charges asserting bad faith bargaining. The Court did, however, agree with the district that it has authority to decide the contract dispute. As a result, the case was not dismissed. The proceedings were stayed until PERB has exhausted its remedies regarding the unfair practice allegations.

## <u>Leek v. Washington Unified School District</u> (1981) 124 Cal.App. 3d 43

The negotiated contract contained an agency shop provision. Nonmembers of the employee organization

went to court alleging that the agreement was a violation of both the U.S. and the California constitutions. It was argued that nonmember fees paid to the union would be used to further the ideological and political purposes of the union without the permission or control of the nonmembers, and thus violated the First and Fourteenth Amendment protections of free speech and due process. nonmembers further argued, as especially unacceptable, that some of the funds went to the California Teachers Association and the National Edcuation Association, as well as to the local. The Court held, in a 2-1 decision, that the nonmembers should have gone to PERB The dissenting justice argued that since PERB has no authority to rule on the constitutionality of the Acts it administers, the court should decide the question as raised. The majority held that the constitutionality issue was premature.

The second category of cases deal with enforcement of PERB orders.

San Mateo City School Dist. v. PERB

CSEA v. PERB

Healdsburg Union H.S. Dist., et al., v. PERB

(1981) 126 Cal.App. 3d 1051

This decision presented issues of law with respect to the scope of bargaining under the EERA. On a 2-1 decision, the Court of Appeals for the First Appellate District held that the statute does not confer upon the Board power to make rules construing or varying the scope of negotiation, but a reviewing court should defer to the Board's expertise to the extent of giving great weight to its construction of the statute. (J. R. Norton Co. v. Agriculture Labor Relations Bd. (1979) 26 Cal.3d 1, 29; Agriculture Labor Relations Bd. v. Superior Court (1976) 16 Cal.3d 392, 411). They further held, however, that the division of opinion among the members, as to the test for determining negotiability, has prevented the Board from developing an expert construction that can assist the courts in reviewing the challenged orders. Until the Board develops an administrative construction in some future case, it will fall to the courts to act without the aid of an administrative construction in reviewing on a case-by-case basis the Board's application of the statute, according full deference to any findings of fact made by the Board on substantial evidence.

At the time of printing of this report, the decision of the Court of Appeals had been accepted for review by the California Supreme Court. A decision should be issued in 1982.

# Santa Monica C.C.D. v. PERB (1980) 112 Cal.App.3d 684

Full-time faculty were offered an 8% salary increase if they waived bargaining rights on all other matters for a specified period of time. The same offer was made to part-time employees who rejected it. District then paid the full-time employees the 8% salary increase. PERB held that the District committed an unfair practice when it conditioned the 8% increase on a requirement that the full-time employees give up bargaining rights. The Board ordered a retroactive payment of 8% to the part-time employees. The Court of Appeal upheld PERB's order after finding that there was substantial evidence in the record to permit enforcement of the decision. It held the remedy to be appropriate and gave deference to the expertise of the administrative agency which oversees collective bargaining.

## Oakland U.S.D. v. PERB (1981) 120 Cal.App.3d 1007

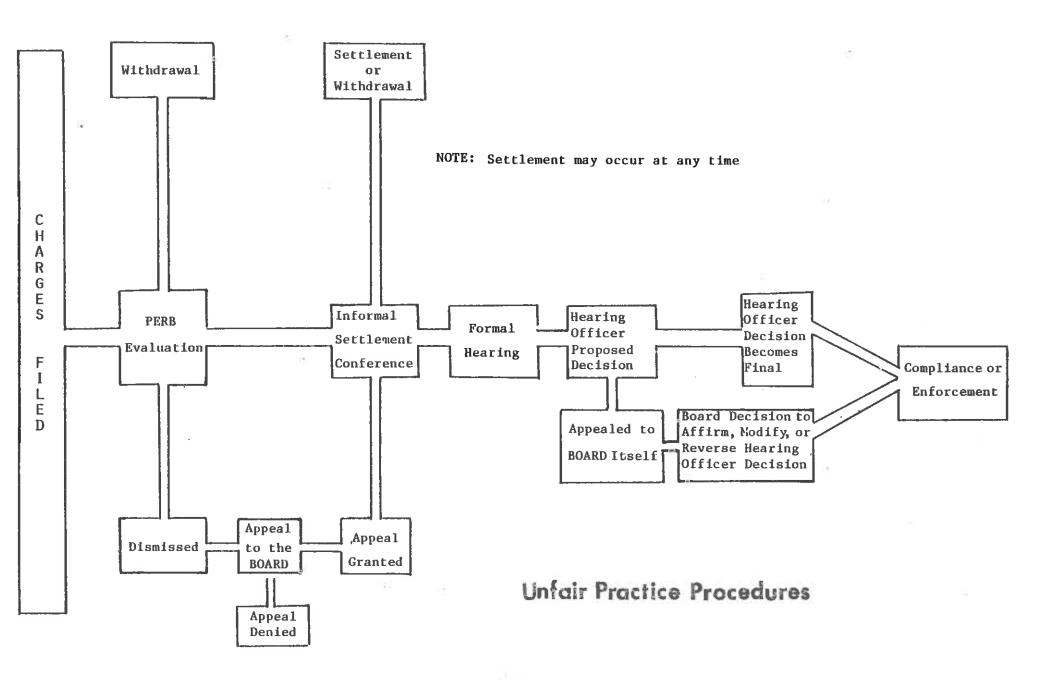
The Court of Appeal enforced PERB's order which held that the District had violated the EERA by unilaterally changing the administrator of the health benefits program. The former administrator (Blue Cross) had guaranteed, through a conversion clause, that employees who terminated employment would be eligible to convert to other Blue Cross plans. The District unilaterally changed to another private insurance carrier which did not offer such conversion rights to the employees. The District argued that the choice of the carrier was outside the scope of negotiations. PERB held that the change in this case resulted in a reduction of benefits to employees and was, therefore, a violation of the duty to meet and negotiate in good faith. PERB's order directed the District to bargain over the identity of a new carrier and either, (1) require the new carrier to provide conversion rights or (2) return to the old carrier. The Board also provided that the District make up any loss of benefit to employees who terminated without conversion rights.

Los Angeles C.C.D. v. PERB (Unpublished)

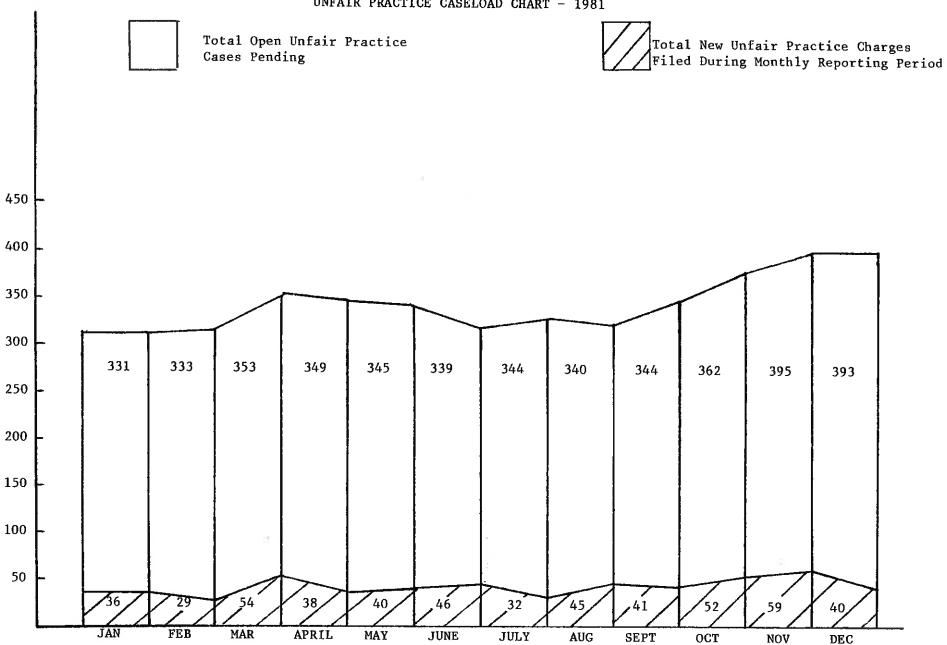
PERB held that two SEIU Locals were different organizations for purposes of representing both rank and file and supervisory employees within the same district. The Court of Appeal concluded that PERB was wrong as a matter of law and held that the two locals were the same organization.

## $\underline{\mathbf{A}} \ \underline{\mathbf{P}} \ \underline{\mathbf{P}} \ \underline{\mathbf{E}} \ \underline{\mathbf{N}} \ \underline{\mathbf{D}} \ \underline{\mathbf{I}} \ \underline{\mathbf{X}}$

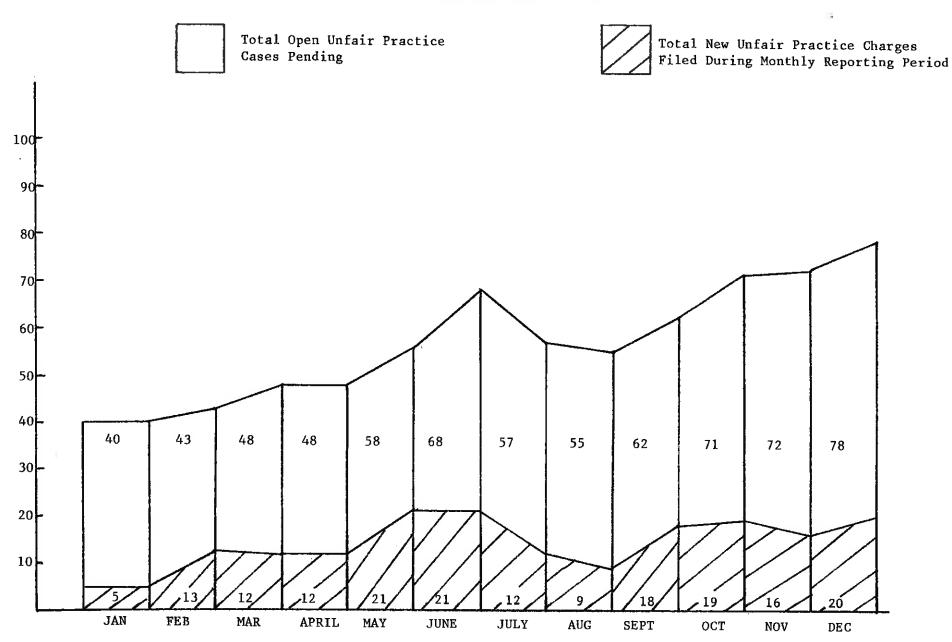
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	HEERA	•	•	•	•	•		•	•	•	•	•		•	•	•	(2)	•	(*)	٠		62
Sta	tistics	٠		•	•	•		•			•					•	•	•		•		63
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Ele	ction Lo	g		•			•	•	•	•		•	•		•	•	٠	•	٠	٠		67
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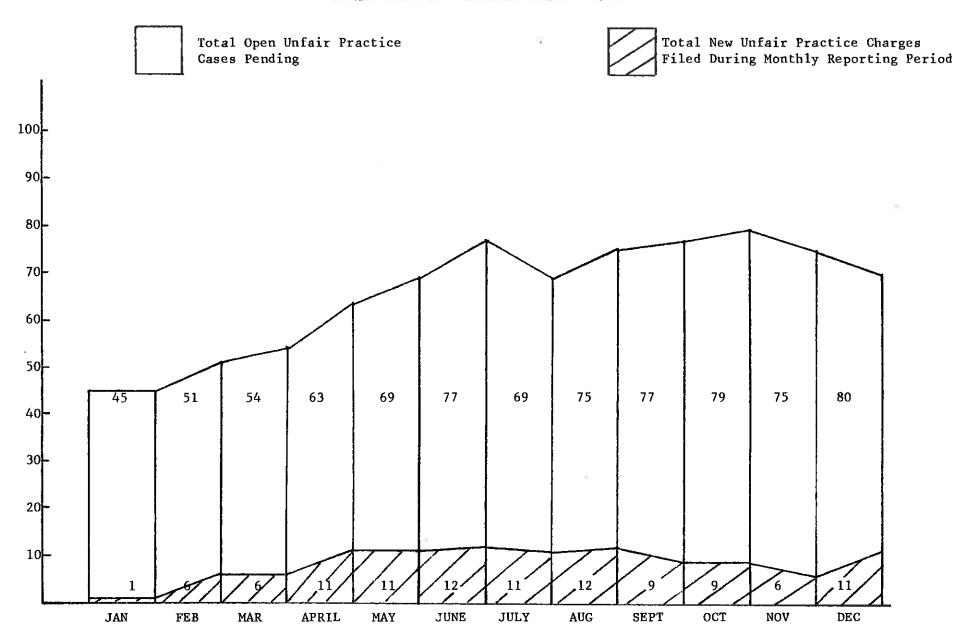
EERA UNFAIR PRACTICE CASELOAD CHART - 1981



SEERA
UNFAIR PRACTICE CASELOAD CHART - 1981



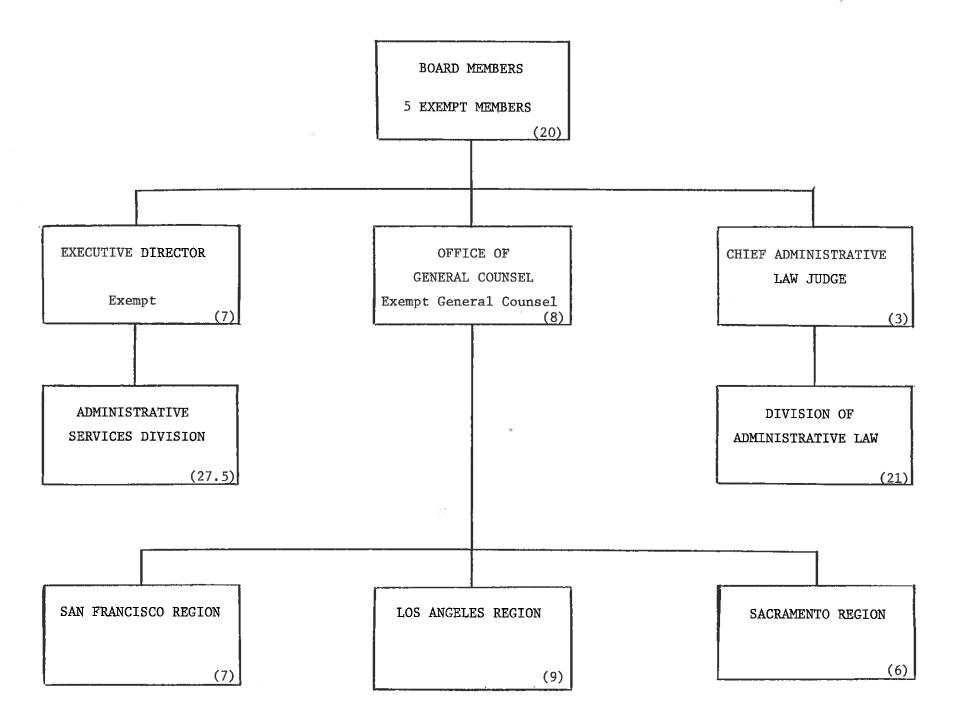
HEERA
UNFAIR PRACTICE CASELOAD CHART - 1981



## PUBLIC EMPLOYMENT RELATIONS BOARD

	1978	1979	1980	1981
/EERA/				
Elections Excl Rep Decert OS Runoff	137 68 24 45	122 44 47 31	91 26 38 25 2	75 16 30 26 3
Req/Int	73	75	69	<b>5</b> 5
Unit Mod	68	122	138	186
Mediation	305	563	412	376
Factfinding	48	85	63	52
Public Notice	8	14	11	12
Unfair Practice	564 *	962 **	445	512
Admin Appeals	28	25	22	
Request for Injunctive Relief	11	35	26	
Requests for Judicial Review	3	1	1	
Other Court Actions	2	6	16	
/HEERA/				
Elections			4	6
Unfair Practice	0	15	54	105
Admin Appeals			6	
Request for Injunctive Relief		2	6	
/SEERA/				
Elections				23
Unfair Practice	15	16	55	178
Admin Appeals		5	1	
Request for Injunctive Relief	3		2	

<sup>\*200</sup> Proposition 13 related filings. \*\*500 filings related to one case.



#### LIST OF ABBREVIATIONS USED IN ELECTION LOG

AFSCME AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL

**EMPLOYEES** 

AFT AMERICAN FEDERATION OF TEACHERS

APSPA AMADOR-PLEASANTON SCHOOL PSYCHOLOGISTS ASSOCIATION

ASCA ASSOCIATION OF CA STATE ATTORNEYS & HEARING OFFICERS

CA CONSENT AGREEMENT

CAHP CALIFORNIA ASSOCIATION OF HIGHWAY PATROLMEN

CAUSE COALITION OF ASSOCIATIONS & UNIONS OF STATE EMPLOYEES

CCD COMMUNITY COLLEGE DISTRICT

CCOA CALIFORNIA CORRECTIONAL OFFICERS ASSOCIATION

CDFEA CALIFORNIA DEPARTMENT OF FORESTRY EMPLOYEES ASSOCIATION

CLEATE INTERNATIONAL FEDERATION OF PROFESSIONAL & TECH ENGINEERS

CSEA CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION

CSEA CALIFORNIA STATE EMPLOYEES ASSOCIATION

CTA CALIFORNIA TEACHERS ASSOCIATION

CVCEO CHULA VISTA CLASSIFIED EMPLOYEES ORGANIZATION

CWA COMMUNICATIONS WORKERS OF AMERICA

D DIRECTED ELECTION

ESD ELEMENTARY SCHOOL DISTRICT

FA FACULTY ASSSOCIATION

FAUCSC FACULTY ASSOCIATION AT US SANTA CRUZ

FMCS FRANKLIN MCKINLEY CLASSIFIED SUPERVISORS

HSD HIGH SCHOOL DISTRICT

J&LC JUDICIAL AND LEGAL COALITION

Jtunesd Joint Union Elementary School District

JtunHSD JOINT UNION HIGH SCHOOL DISTRICT

KCEG KONOCTI CLASSIFIED EMPLOYEES GROUP

LA LOS ANGELES

MPTFA MENDOCINO PART-TIME FACULTY ASSOCIATION

OS ORGANIZATIONAL SECURITY

PECG PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT

PEU PUBLIC EMPLOYEES UNION LOCAL

RO RUN-OFF

S SACRAMENTO

SCFFT SUNOL CHAPTER, FREMONT FEDERATION OF TEACHERS

SEIU SERVICE EMPLOYEES INTERNATIONAL UNION

SF SAN FRANCISCO

TEAM TEAMSTERS

TSTA TRACY SUBSTITUTE TEACHERS ORGANIZATION

UCLAFA FACULTY ASSOCIATION AT UCLA

UPE UNITED PUBLIC EMPLOYEES

USD UNIFIED SCHOOL DISTRICT

UTE UNITED TEACHERS OF ENTERPRISE

UTAV UNITED TEACHERS OF ANTELOPE VALLEY

#### PUBLIC EMPLOYMENT RELATIONS BOARD EERA ELECTIONS HELD - 1981

1981				UNIT	No OF	No OF	ORG WITH	OTHER ORG	O'THER ORG	NO	CHALG	VOID	TYPE
DATE	R-No	CASE NO	SCHOOL DISTRICT	TYPE	VOTERS	VOTES	MAJORITY	(OS-YES)	(OS-NO)	REP	BALLOT	BALLOT	OF ELECT
									(02 (0)	1131	DADLOT	DADLOI	BLBCI
01/13	SF- R-0107	0S-85	FREMONT UnHSD	CL		96		76	20		0	0	CA
01/13	SF- R-0057	os-84	FREMONT Un HSD	C	453	344		270	74		0	0	CA
01/15 01/17	S- R-0692 LA- R-0586X		TRACY ESD	C	25	17	TSTO			0	0	0	ÇA
01/21	S- R-0485	08-31	AZUSA USD HANFORD ESD	CL	16 1	153	CSEA-80	AFSCME-71		1	1	0	CA
01/27	SF- R-0068A	05-31	SAN JOSE USD	CL CL	136 600	104 40		86	18		0	0	CA
01/27	SF- R-0068C	0S-87	SAN JOSE USD	CL	360	92		21 64	19 28		_	_	CA
02/03	LA- R-0634	OS-33	ORANGE USD	CL	1,181	511					0	0	CA
02/18	LA- R-0459	05-36	LAGUNA BEACH USD	CL	111	52		296 47	215 5		0	12	CA
03/26	LA- R-0657	0S-35	LOS NIETOS ESD	C	106	72		52	20				CA
03/31	LA- R-0659	OS-37	SAN MARCOS USD	CL	241	143		50	93		0 0	0	CA
04/08	S- R-0034B	V- 3,	FOLSOM CORDOVA USD	CL	5	4	See NO REP	CSBA-0	93	4	0	0	CA
04/09	S- R-0410	OS-26	SHASTA UnHSD	č	259	201	OCC NO MAI	147	54	*	0	2	CA CA
04/22	SF- R-0627		SUNOL GLEN ESD	Č	10	10	SC.FFT-6	• • •	27	11	0	0	_
04/23	SF- R-0030A	os-89	MT. DIABLO USD	ČL	500	55	00,110	36	19	7	Ö	ŏ	CA CA
04/29	SF- R-0053A	0S-90	FREMONT USD	C	1,525	934		313	619		0	0	CA
04/30	SF- R-0025	os-88	SAN RAMON VALLEY USD	Ċ	750	522		282	236		la La	Ô	CA
05/07	SF- R-0184	D-73	SAN FRANCISCO USD	С	4,342	3,447	CTA-1771	AFT-1612	-3-	64	ò	9	D
05/07	LA- R-0123	D-77	BURBANK USD	C	658	551	CTA-322	AFT-212		17	ŏ	ó	Ď
05/12	S- R-0036A	0S-25	STOCKTON USD	C	1,138	769		501	266	•	2	1	CA
05/13	LA- R-0247A	D-75	CYPRESS ESD	CL	56	46	CSEA-24	AFSCME-22		0	ō	Ó	D
05/14	S- R-0078	D-31	MODOC JtUSD	C	71	67	CTA-41	Teamst-26		0	0	Ō	D
05/14	S- R-0112	D-33	ENTERPRISE ESD	C	100	99	CTA-50	UTE49		0	0	ŏ	D
05/14	S- R-0691A		COLUMBIA ESD	CL	17	17	CSEA-16			1	0	0	CA
05/14	S- R-0691B		COLUMBIA ESD	CL	5	5	CSEA-3			2	0	0	CA
05/18	SF- R-0615B		MENDOCINO CCD	С	190	144	MPTF A-129			15	0	0	D
05/19	SF- R-377B	D-75	ALUM ROCK UnESD	CL	250	178	Teamst-125	CSEA-48		1	4	1	D
05/19	LA- R-0150	os-38	SANTA PAULA ESD	CL	142	70		70	9		0	0	CA
05/20	SF- R-0549	0S-90	KNIGHTSEN ESD	CL	13	11		9	2		0	0	CA
05/20	SF- R-476B	D-32	KONOCTI USD	CL	52	47	KCEG-24	CSEA-22		1	0	0	D
05/21 05/ <i>2</i> 7	S- R-0486	D-32	CUTLER-OROSI USD	C	133	122	CTA-97	AFT-25		0	0	0	D
05/28	LA- R-0709 S- R-0646	D-76	CHULA VISTA CITY ESD	CL	787	479	CVCE0-315	CSEA-162		2	0	1	D
05/28	SF - R-0125A	D- 35 D- <i>7</i> 7	ALVIEW-DAIRYLAND USD	C	13	13	See NO REP	CTA-5		7	0	0	D
06/01	LA- R-0361	D-85	JEFFERSON UnHSD COACHELLA VALLEY USD	C	405	377	AFT-191	CTA-162		9	15	0	D
06/02	LA- R-0013A	D-05 D-78	TORRANCE USD	C	312	297	CTA-160	AFT-128		3	6	0	D
06/02	LA- R-0018B	D-79	BALDWIN PARK USD	CL CL	305 122	225 59	SEIU-137	CSEA-82		6	0	3	D
06/03	LA- R-0173B	D-80	SAN DIEGO CCD	CL.	494	298	CSEA-42 CEA-164	SEIU-10		7	0	0	D
06/04	LA- R-0276	D-81	OCEAN VIEW ESD	C	109	296 99	CTA-66	SEIU-131 AFT-33		3	0	0	D
06/12	LA- R-0161	os-40	LOS ALAMITOS USD	C	257	176	C1A-00	AF 1-33 145	74	0	0	1	D
06/12	SF- R-0604B	D-76	FRANKLIN-MCKINLEY ESD	CL/S		2		FMCS-1	31		0	0	CA
06/18	LA- R-0786A	D-82	RANCHO SANTIAGO CCD	CL	187	111	CSEA-105	5 LM 19— 4		6	0	0	D
06/18	S- R-0695		MODOC COE	C	6	6	TEAMST-6	CTA-O		0	0	1	D
06/23	LA- R-029BX		SANTA MONICA CCD	CL	75	55	CSEA-30	SEIU-24		1	0	0	CA
06/30	LA- R-0485	D-83	RIVERSIDE CCD	C	486	319	Jun-ju	CTA-156	<b>AF</b> T_	137 26	0	2 0	D D
		-	-	-	<b>-</b>	3.7		J-11-170	W. 1 =	ישן בט	U	۵.	ע

<sup># =</sup> OS Rescission Election

### PUBLIC EMPLOYMENT RELATIONS BOARD EERA ELECTIONS HELD - 1981

1981				UNIT	No OF	No OF	ORG WITH	OTHER ORG	OTHER	110			TYPE
DATE	R-No	CASE NO	SCHOOL DISTRICT	TYPE	VOTERS	VOTES	MAJORITY	(OS-YES)	ORG (OS-NO)	NO REP	CHALG BALLOT	VOID	OF
							TAND O REEL	(00-1115)	(00-140)	TIE!	DALLUI	BALLOT	ELECT
07/01	LA- R-0098	D-70	INGLEWOOD USD	C	671	531	CTA-397	AFT-130		• 4	0	0	D
07/09	SF → R-005B	D-79	ALBANY CITY USD	C	32	20		UPE-10	CSEA	-10 0	0	Ô	D
07/06	LA- R-0526	OS– 39#	CITRUS CCD	CL	180	79		24	55	-	Ō	ĭ	CA
07/14	LA- R-745	UM-154	PASADENA AREA CCD	C	217	101	CTA-97			4	0	o o	CA
08/27	LA- R-0156A	D-73	VENTURA COUNTY CCD	CL	186	118	SEIU-98	CSEA-13		7	Ö	ň	D
08/27	LA- R-0156B	D-74	VENTURA COUNTY CCD	CL	136	81	SEIU-67	CSEA-10		ú	Ô	n	D
09/24	SF- R-0005B	D-79	ALBANY CITY USD	CL	34	27	UPE~20	CSEA-7		ò	ň	ŏ	RO
09/30	LA- R-0427	OS-41	MANHATTAN BEACH CITY ESD	С	144	70		56	14	ň	ň	ň	CA
10/01	S- R-0104	0S-27	LAKE TAHOE USD	C	190	139		95	43	ñ	ĭ	7	CA
10/13	SF- R-0087	OS-92	AMADOR VALLEY JtUnHSD	C	220	123		98	18	ň	7	Ó	CA
10/14	SF- R-0028X		LIVERMORE VALLEY JEUSD	CL	135	100	SEIU-55	CSEA-40	10	5	2	Ö	D
10/14	LA- R-0485	D-83	RIVERSIDE CCD	С	460	292	CTA-159	AFT-133	0	ó	7	6	_
10/29	SF-R-0049B	D-81	BERKELEY USD	CL	180	117	V-M. 155	CSEA-56	PEU-54	6	1	0	RO D
11/02	SF- R-0092B		PLEASANTON JtESD	C	5	5	A/PSPA-5	00211 30	1,50-51	n	'n	0	_
11/04	S- R-0438	D-36	LOS RIOS CCD	Č	1325	1023	AFT-542	CTA-445		36	0	2	D D
11/04	LA- R-0055	D-87	ANTELOPE VALLEY UnHSD	Č	27 1	258		UTAV-128	CTA-127	2	1	1	D
11/05	LA- R-0248	08-42	YUCAIPA JtUSD	CL	201	123		93	30	Ō	'n	0	CA
11/10	SF- R-0037C	D-83	RICHMOND USD	CL	265	187	CSEA-103	PEU-78	30	5	1	0	Đ
11/17	S- R-0296A	08-28	SHASTA UnHSD		69	34	0004-103	18	16	0	'n	v	
11/17	S- R-0296B	0S~29	SHASTA Un HSD		95	82		55 55	27	0	0	0	CA
11/18	S- R-0700	-	NORTH COW CREEK ESD	CL	8	8	CSEA-6	,,,	£1	2	Ů	0	CA
11/23	LA- R-0424		ANTELOPE VALLEY CCD	CL	30	28	011-0	CSEA-9		19	0	0	CA
11/24	LA- R-0845		IMPERIAL CCD	C	108	97	CTA-52	COER-3		45	0	-	D
11/24	LA- R-0857		LOST HILLS UnSD	Ċ	18	15	CTA-14			40	U	0	CA
12/03	LA- R-0408	D-92	SANTA CLARITA CCD	CL	57	52	See No REP	CSEA-24		28	0	•	CA
12/03	SF- R-0040B	D-81	BERKELEY USD	CL	184	143	PEU-81	CSEA-62			-	0	D
12/08	S- R-0520	OS-30	LODI USD	OD	695	289	10-01	227	62	0	0 0	ų.	D
12/15	SF- R-0073	0S-93	AMADOR VALLEY JtunHSD	CL	350	141		81	60	Ü	0	ı	CA
12/16	LA- R-0055	D-87	ANT ELOPE VALLEY UnHSD	C C L	270	271	UTA V-138	AVUHSTA-12		0	U o	0	CA
12/16	S- R-0284	D-38	JUNCTION ESD	J	33	30	CSEA-14	N TOUBLE   Z	,	16	0	0	RO
		_ 3•	C C T C C C C C C C C C C C C C C C C C		33	JU	OODA~ 14			10	U	O	D

## PUBLIC EMPLOYMENT RELATIONS BOARD SEERA ELECTIONS HELD - 1981

DATE R-NO CASE NO EMPLOYER TYPE VOTERS VOTES MAJORITY (OS-YES) (OS-NO) REP BALLOT BE	VOID TYPE OF BALLOT ELECT  296 D 22 D
	296 D 22 D
	22 D
06/26 S-SR-001 STATE OF CALIF 01 24018 13570 CSEA-12173 1200 197	22 D
06/26 S-SR-002 STATE OF CALIF 02 1783 1357 ACSA-525 J&LC-500 21 311	
06/26 S-SR-003 STATE OF CALIF 03 2189 1230 CSEA-1119 109 2	32 D
06/26 S-SR-004 STATE OF CALIF 04 31989 17007 CSEA-14878 Other-1155 880 94	32 D 77 D
06/26 S-SR-005 STATE OF CALIF 05 4212 2844 CAHP-2785 59 0	3 D
06/26 S-SR-006 STATE OF CALIF 06 6514 3941 CCOA-1883* Team-287 CSEA-1707 43 21	92 D
06/26 S-SR-007 STATE OF CALIF 07 4329 3158 CAUSE-1650 CSEA-1241 74 193	9 D
06/26 S-SR-008 STATE OF CALIF 08 2282 1872 CDFEA-1112 CSEA-593 22 145	13 D
06/26 S-SR-009 STATE OF CALIF 09 4714 4001 PECG-2212 CSEA-918 CLEATE-386 91 394	27 D
06/26 S-SR-010 STATE OF CALIF 10 1285 960 CSEA-575 IFPTE-295 70 20	12 D
06/26 S-SR-011 STATE OF CALIF 11 3066 1841 CSEA-1152 CLEATE-561 113 15	30 D
06/26 S-SR-012 STATE OF CALIF 12 9376 6912 CSEA-4224 LIUNA-2377 218 93	21 D
06/26 S-SR-013 STATE OF CALIF 13 472 411 IUOE-246 CSEA-98 SETC-58 2 7	8 D
06/26 S-SR-014 STATE OF CALIF 14 793 630 CSEA-434 SEPTA-187 7 3	1 D
06/26 S-SR-015 STATE OF CALIF 15 6343 3767 CSEA-2336 SEIU-1362 59 10	24 D
06/26 S-SR-016 STATE OF CALIF 16 977 627 UAPD-427 CSEA-137 23 40	27 D
06/26 S-SR-017 STATE OF CALIF 17 1619 1073 CSEA-583 CNA-451 28 11	3 D
06/26 S-SR-018 STATE OF CALIF 18 7553 4847 OWA-2036* CSEA-1706 CAHST-814 59 232	1 10 Ď
06/26 S-SR-019 STATE OF CALIF 19 3089 2166 ** AFSCME-1054 CSEA-1003 52 57	
06/26 S-SR-020 STATE OF CALIF 20 1509 718 CSEA-587 AFSCME-104 26 1	35 D 30 D
08/07 S-SR-019 STATE OF CALIF 19 3089 2418 * AFSCME-1069 CSEA-1026 53 0	53 D
10/22 S-SR-019 STATE OF CALIF 19 3019 2117 AFSCME-1081 CSEA-1038 0 8	65 RO
10/22 S-SR-018 STATE OF CALIF 18 7563 4506 CWA-2575 CSEA-1931 0 60	161 RO
10/23 S-SR-006 STATE OF CALIF 06 6849 3944 CCOA-2119 CSEA-1825 0 3	108 RO

<sup>\*</sup> Runoff necessary

\*\* Challenges Determinative

## PUBLIC EMPLOYMENT RELATIONS BOARD HEERA ELECTIONS HELD - 1981

1981 DATE	R-No	CASE NO	EMPLOYER	UNIT TYPE	No OF VOTERS	No OF VOTES	ORG WITH MAJORITY	OTHER ORG (OS-YES)	OTHER ORG (OS-NO)	NO REP	CHALG BALLOT	VOID BALLOT	TYPE OF ELECT
02/23 02/26	SF-PC-1040 SF-PC-1041		UNIVERSITY OF CALIFORNIA UNIVERSITY OF CALIFORNIA	C	2,300 292	1,604 200	See No Rep FAUCSC-109	UCLAFA-780		824 91	0	5	RO RO

## INJUNCTIVE RELIEF REQUESTS - 1981

	Case Name	No.	Allegation	Filed	Disposition
1.	PERB v. SWEETWATER UNION HSD	LA-CE-1219 1221 1248 1279 1281 1298 LA-CO-147	Bad faith negotiating tactics	2/5/81	Withdrawn 4/1/81
2.	SEIU LOCAL 411 v. DEPT. OF GENERAL SERVICES	S-CE-38-S S-CE-39-S	Unilateral change in working conditions	2/6/81	IR# 19-S Bd. denied request 2/17/81
3.	CWA PSYCH. TECH. UNION LOCAL 11555 v. DEPT. OF DEVELOPMENTAL SERVICES (STOCKTON STATE HOSPITAL)	S-CE-44-S	Denial of access	2/10/81	Withdrawn 2/16/81
ч.	CSEA v. SAN JUAN UNIFIED SCHOOL DISTRICT	S-CE-407	Unilateral action affecting hours, salaries & working conditions	a) 3/24/81  b) Refiled 4/06/81	Withdrawn  IR# 21 Bd. denied request 4/29/81
5.	STATE TRIAL ATTY'S ASSN. v. STATE OF CA (CALTRANS & OER)	S-CE-2-S	Refusal to distribute employee organizational mail to employees	3/25/81	IR# 20-S Bd. denied request

	Case Name	No.	Allegation	Filed	Disposition
6.	TEHACHAPI TEACHERS ASSOCIATION v. TEHACHAPI USD	LA-CE-1356	Refusal and failure to meet and negotiate	4/16/81	IR# 22 Bd. denied request 5/6/81
7.	MT. DIABLO USD; MT. DIABLO ED. ASSN., CTA, NEA	SF-CE-438	Unlawful organizational security clause	4/21/81	Withdrawn 5/20/81
8.	CENTRALIA TEACHERS ASSN. v. CENTRALIA SCHOOL DISTRICT	LA-CE-1342	Refusal to bargain	5/4/81	IR #26 Bd. denied request 7/30/81
9.	KERN COMMUNITY COLLEGE v. KERN COMMUNITY COLLEGE DISTRICT	LA-CE-1300	Refusal to bargain	5/4/81	IR #25 Bd. denied request 7/6/81
10.	CWA PSYCH. TECH. UNION LOCAL 11555 v. CSEA	S-CO-6-S	Distribution of leaflets containing misstatements	5/5/81	IR# 23 Bd. denied request 5/5/81
11.	OFFICE OF SANTA CLARA COUNTY SUPERINTENDENT OF SCHOOLS v. SEIU, LOCAL 715 (OT/BS)	SF-CO-150	Failure to bargain in good faith	5/7/81	TRO Denied 5/11/81 Writ filed 5/12/81 P.I. Granted 5/15/81
12.	OFFICE OF SANTA CLARA COUNTY SUPERINTENDENT OF SCHOOLS v. SEIU, LOCAL 715 (AIDES)	SF-CO-151	Failure to bargain in good faith	5/7/81	TRO Denied 5/11/81 Writ filed 5/12/81 P.I. Granted 5/15/81

	Case Name	No.	Allegation	Filed	Disposition
13.	SEIU v. OFFICE OF SANTA CLARA COUNTY SUPERINTENDENT OF SCHOOLS	SF-CE-569	Bad faith bargaining: Employer is conditioning contractual agreement on unlawful contract clause	5/28/81	IR #24 Bd. denied request 7/7/81
14.	CSEA v. FRESNO USD	None	Employer harassed, intimidated, and discriminated against employee and denied employee organization rights	6/2/81	6/2/81 Rejected by GC (non-compliance with filing requirements)
15.	UNITED PROFESSORS OF CALIFORNIA V. CALIFORNIA STATE UNIVERSITY AND COLLEGES	LA-CE-40-H	Employer threatened employee with demotion, and demoted employee because of union activity	6/8/81	TRO granted 6/29/81
16.	CTA v. AMADOR VALLEY JT. UNION HIGH SCHOOL DISTRICT	SF-CE-571	Unilateral decision to layoff employees	6/9/81	Withdrawn 6/19/81
17.	AFSCME v. UNIVERSITY OF CALIFORNIA, IRVINE	LA -CE50-H	Unilateral changes	7/21/81	7/23/81 Rejected by GC (non-compliance with filing requirements)
18.	UNIVERSITY OF CALIFORNIA STUDENT BODY v. REGENTS OF UNIVERSITY OF CALIFORN	SF-HS-1-H	Prohibiting students from participating in meet and confer process	8/10/81	IR #27 Bd. denied request 8/21/81

	Case Name	No.	Allegation	Filed	Disposition
19.	NOVATO FEDERATION OF TEACHERS v. NOVATO UNIFIED SCHOOL DISTRIC	SF-CE-473 CT	Violation of section 3540, 3.5(a) & (b)	a) 8/19/81	8/20/81 Rejected by GC (pending receipt of declarations)
				b) 8/24/81 (Re-filed)	IR # 28 Bd. denied request 9/4/81
20.	KONOCTI ED. ASSN. v. KONOCTI UNIFIED SCHOOL DISTRICT & OAKLEY UNION ELEM. SCHOOL DISTRICT	S-CE-587	Discriminatory layoff	8/31/81	Bd. granted request. Court date set 11/9/81 Cont. 11/23/81 Cont. 11/30/81 Taken off calendar 11/25/81 Charges withdrawn 12/1/81
21.	DENNIS KELLY & GERALD FLEMING V. SAN FRANCISCO UNIFIED SCHOOL DISTRICT; SAN FRANCISCO CLASS ROOM TEACHERS ASSN., CTA	SF-CO-156 SF-CO-595	Interference with section 3544.3 and 3544.9 rights	9/18/81	IR #29 Bd. denied request 9/21/81
22.	UNITED TEACHERS LOS ANGELES V. LOS ANGELES UNIFIED SCHOOL DISTRICT	LA-CE-1427	Threatened, coerced and intimidated employees in violation of section 3543.5(a), (c) and (e)	10/6/81	IR #31 Bd. denied request 12/21/81

	Case Name	No.	Allegation	Filed	Disposition
23.	CSEA v. STATE OF CALIF., DEPT. OF DEVELOPMENTAL SERVICES, NAPA STATE HOSPITAL CWA	S-CE-78-S	Discriminatorily prohibiting CSEA from use and access to the Employee Organization Room	10/7/81	Charges withdrawn 10/13/81
24.	IONE FACULTY ASSN. v. IONE UNIFIED SCHOOL DISTRICT	S-CE-449	Failure to bargain in good faith	10/12/81	11/13/81 Rejected by GC (noncompliance with filing requirements).
25.	CWA PSYCH TECH UNION v. STATE OF CALIF., AND KENNETH CORY, STATE CONTROLLER	S-CE-92-S	Illegal deduction of dues	11/20/81	IR #30-S Bd. denied request 12/8/81
26.	CSEA v. REGENTS OF U.C.	SF-CE-78-H	Discriminatory discharge	12/7/81	Withdrawn 2/2/82
27.	CAUSE v. CALIF. DEPT. OF PARKS & RECREATION	S-CE-106-S	Unilateral change	12/17/81	IR #32-S Bd. denied request 1/18/82